

Hearing Date: February 4, 2019 at 10:00 a.m.
Objection Deadline: January 28, 2019 at 4:00 p.m.

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Counsel for Apex Systems, LLC, and certain affiliated entities

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : **Chapter 11**
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SEARS HOLDING CORPORATION, et al., : **Case No. 18-23538 (RDD)**
:
: **(Jointly Administered)**
:
Debtors.¹ :
:
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**LIMITED OBJECTION OF APEX SYSTEMS, LLC
TO DEBTORS' NOTICE OF CURE COSTS AND POTENTIAL
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTION**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179

Apex Systems, LLC, and certain affiliated entities (collectively “Apex”),² by and through undersigned counsel, file this limited objection and reservation of rights (the “Cure Objection”) to the Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction filed by the debtors and debtors-in-possession (collectively, the “Debtors”) on January 18, 2019 (the “Cure Notice”) [Doc. No. 1731], and in support thereof, respectfully states as follows:

1. On January 18, 2019, the Debtors filed the *Notice of Successful Bidder and Sale Hearing* [D.I.# 1730] and the Cure Notice seeking to potentially assume and assign certain executory contracts, including the Apex Agreement (as hereinafter defined), to Transform Holdco, LLC (the “Buyer”) in connection with the sale of substantially all of the Debtors’ assets and setting forth the amounts the Debtors believe to be sufficient to cure any defaults under such agreement. Exhibit A of the Cure Notice contains a lengthy schedule of “Assignable Executory Contracts” (the “Assumption Schedule”). In the Assumption Schedule, the Debtors listed two executory contracts with Apex that are to be assumed by the Debtors. [Assumption Schedule at p. 32]. The Cure Notice contains the following references to Apex:

Sears Holding Management Corporation	Apex Systems, Inc.	IT – APEX – MSA – November 2016	\$10,244.00
Sears Holding Management Corporation	Apex Systems, LLC		\$0.00

Limited Objection

2. Apex and Sears Holding Management Corporation (“Sears Holdings Management”) are party to a certain pre-petition Master Service Agreement dates as of November

² As of December 31, 2014, Apex Systems, Inc. became a limited liability company, thus becoming Apex Systems, LLC.

10, 2016 (the “MSA” and collectively with all other supporting or related agreement, amendments, addendums, exhibits, and/or schedules to the foregoing, the “Apex Agreement”).

3. Upon review of its books and records, Apex asserts that as of the Petition Date the total of \$207,288.00 was due and payable to Apex pursuant to the Apex Agreement (the “Pre-Petition Amount Due”). Additionally, other amounts may become due and owing under the Apex Agreement (such amounts together with the Pre-Petition Amount Due are referred to herein as the “Cure Amount”).

4. The documents comprising the Apex Agreement and amounts presently outstanding under the Apex Agreement are voluminous and/or confidential, but were provided to the Debtors’ counsel prior to the original deadline to object to the Cure Notice.³

5. For the Debtors to assume and assign any executory contract or unexpired lease, the Debtors must cure any amounts outstanding thereunder pursuant to section 365 of the Bankruptcy Code and provide adequate assurance of future performance. *See* 11 U.S.C. § 365(b)(1).

6. To the extent the Debtors cure all amounts currently owing, or that will become due post-petition until the date of assumption and provide adequate assurance of future performance, Apex has no objection to the assumption of the Apex Agreement. However, because certain amounts are presently outstanding and may continue to accrue prior to assumption, Apex files this limited objection to ensure that it receives cure of such defaults under the Apex Agreement, including without limitation, the Cure Amount.

³ Apex’s deadline to object to the Cure Notice was extended by agreement of counsel.

Reservation of Rights

7. Apex reserves the right to modify, supplement and/or amend this limited objection as further information becomes available, including as to any additional amounts that may become due prior to the assumption date. Apex reserves and retains all rights to assert other claims that may arise under the Apex Agreement relating to pre-assumption defaults or events.

WHEREFORE, Apex objects to the assumption and assignment of the Apex Agreement unless Apex receives the full Cure Amount, in cash, upon assumption of the Apex Agreement and requests that the Court enter an order consistent with this limited objection and grant Apex such further relief as the Court deems appropriate.

Dated: January 28, 2019
New York, New York

McGUIREWOODS LLP

By: /s/ Shawn R. Fox

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